

EXHIBIT

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EXHIBIT

1-A

17CV33998

Filed 6/16/2017 2:39:25 PM

Lori Oliver

District Clerk

Shelby County, Texas

Nicol Shedd

NO. 17CV33998

RAMONA L. SMITH, INDIVIDUALLY
AND AS ADMINISTRATOR OF THE
ESTATE OF ARTHUR SMITH

Plaintiff,

v.

GOVERNMENT EMPLOYEES
INSURANCE COMPANY ("GEICO") and
R&M TOWING AND RECOVERY ("R &
M"),

Defendants.

§ IN THE DISTRICT COURT OF

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SHELBY COUNTY, TEXAS

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273RD JUDICIAL DISTRICT

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COMPLAINT AND REQUEST FOR JURY TRIAL

Plaintiff, RAMONA L. SMITH, INDIVIDUALLY AND AS ADMINISTRATOR OF
THE ESTATE OF ARTHUR SMITH by and through her attorneys, for her complaint against
Defendant GOVERNMENT EMPLOYEES INSURANCE COMPANY ("GEICO") and R&M
Towing and Recovery ("R&M"), states as follows:

PARTIES

1. Plaintiff, Ramona L. Smith, Individually and as Administrator of the Estate of Arthur Smith is a resident of Shelbyville, Shelby County, Texas.
2. Defendant, Government Employees Insurance Company ("GEICO") is a Maryland Corporation doing business in the State of Texas.
3. Defendant GEICO can be served with process through its registered agent, James G. Brown, at 201 Spring Valley Road, Dallas, Texas 75244.
4. Defendant, R&M Towing and Recovery ("R&M") is a Texas entity located at 1127 Ohio Street, Henderson, Texas 75652.

5. Defendant R & M can be served with process at its facility located at 1127 Ohio Street, Henderson, Texas 75652.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action because the contract between the plaintiff, Mrs. Smith, and the defendant, GEICO, as well as the contract between the plaintiff, Mrs. Smith, and the defendant, R&M, were formed in Shelbyville, Texas.

7. This Court has personal jurisdiction over GEICO because GEICO contracted with Mrs. Smith, a Texas resident, and the contract was to be performed in the state of Texas. *See* Texas Civ. Prac. & Rem. Code § 17.042(1).

8. This Court has personal jurisdiction over R&M because R&M is a resident of the state of Texas.

9. Venue is proper in this County under Tex. Civ. Prac. & Rem. Code §15.002 because a substantial part of the events or omissions giving rise to the claim occurred in this County, and also under §15.032 because the loss occurred in this County.

FACTUAL BACKGROUND

The accident and potential lawsuit

10. Defendant, GEICO, issued insurance policy number 4182-17-68-28 to Mr. and Mrs. Smith that provided insurance coverage for the Smith's 2013 Jeep Wrangler, VIN Number 1C4AJWAGXDL531811 (the "Jeep").

11. On June 9, 2013, Mrs. Smith's husband, Mr. Arthur Smith, was returning from a trip to Arkansas on his way to Nacogdoches, Texas, driving the Jeep on Texas Highway 259 near the intersection of County Road 186 in Kilgore, Texas.

12. Without notice, a hidden defect within the Jeep caused an underbody fire that caused Mr. Smith to inhale carbon monoxide, which eventually led to the Jeep crashing into a bridge column.

13. Although he was wearing his seatbelt, Mr. Smith died upon impact.

14. Two days after Mr. Smith's death, Mrs. Smith received a Safety Recall Notice from Fiat Chrysler admitting that the Jeep was defective and that it could suffer an underbody fire and crash. (See Recall Notice attached as Exhibit A)

Mrs. Smith's Contract with R & M

15. Following the crash, the local authorities notified R&M that the Smiths' Jeep needed to be secured and towed to a facility at which it could later be inspected.

16. R&M drafted the contract that governed the provision of its towing and storage services with and for the benefit of Mrs. Smith. (See the Contract attached hereto as Exhibit B).

17. In the Contract, R&M agreed and promised to tow and to store the remains of the Jeep Wrangler from Highway 259 to R&M's towing facility in Henderson, Texas without causing further damage to that evidence.

18. Pursuant to the Contract with Mrs. Smith, R&M towed the Smiths' Jeep from the scene of the accident on Highway 259 to its facility in Henderson, Texas.

19. Pursuant to the Contract with Mrs. Smith, R&M stored the Smiths' Jeep at its facility in Henderson, Texas.

20. Pursuant to the Contract, R&M charged Mrs. Smith \$1,644.35 for its services, including \$914.35 in storage fees.

21. On behalf of Mrs. Smith, R & M was paid for its towing and storage services.

22. Pursuant to their Contract, while the Jeep was in R&M's possession, R&M acknowledged that it needed Mrs. Smith's permission to allow various investigators access to the vehicle for inspection.

23. Through a written letter, Mrs. Smith granted R&M's request for permission to allow access to the Jeep while in R&M's possession. (See Mrs. Smith's letter to R&M regarding access to the Jeep attached as Exhibit C).

24. Mrs. Smith's letter to R&M specifically stated that "no one else has my permission to view the vehicle without consulting my attorney." (*Id.*)

25. On or about July 16, 2013, R&M was in possession and control of Mrs. Smith's Jeep.

26. On or about July 16, 2013, without notice to Mrs. Smith and in breach of its Contract with Mrs. Smith, R&M intentionally and knowingly released the Jeep to the custody and control of GEICO, which thereafter destroyed that evidence.

Mrs. Smith's First Contract with GEICO

27. Following R&M's breach of its Contract, on or about July 18, 2013, while Mrs. Smith's Jeep was in GEICO's possession and control through its agent, IAA, GEICO contracted with Mrs. Smith concerning its continuing storage and preservation of that evidence.

28. GEICO, through its employee and agent, Micah Chambers drafted the Contract governing its agreement to store and preserve the remains of the Jeep dated July 19, 2013. (See Mrs. Smith's first contract with GEICO attached hereto as Exhibit D)

29. Pursuant to its Contract with Mrs. Smith, GEICO promised that "... this vehicle [will be] on hold until further notice. Do not sell this vehicle until you receive written authorization from our company to do so. We agree that this vehicle will be processed in

accordance with IAA's HOLD policy including full wrap and restricted access. Only parties with written authorization from our office will be permitted to access the vehicle." (*Id.*)

30. In consideration for GEICO's promise to store and preserve the evidence, Mrs. Smith's agreed to forgo her right to take possession of that evidence, which ensured that GEICO could eventually sell the remains of the Jeep after Mrs. Smith had fully litigated her claim.

31. Mrs. Smith reasonably relied on GEICO's representations and her Contract with GEICO to ensure the preservation of the Jeep while she pursued her investigation of her husband's death and her possible legal claims.

32. On or about February 12, 2014, Mrs. Smith contacted GEICO and requested that the Jeep be moved into her possession.

33. In response to Mrs. Smith's request, another GEICO employee, David Perry, Mr. Chamber's supervisor, falsely misrepresented to Mrs. Smith that GEICO was prevented by Texas law from allowing Mrs. Smith to have the Jeep moved to her property and possession. Mr. Perry reassured Mrs. Smith that GEICO would continue to hold and preserve the Jeep until the resolution of her legal claims. Mrs. Smith relied on Mr. Perry's representation that GEICO would store and preserve the Jeep until the resolution of her legal claims.

34. GEICO breached its contract with Mrs. Smith when it sold that evidence for \$25 as scrap.

35. GEICO's breach of its written contract with Mrs. Smith has caused her significant monetary damages and extreme emotional distress.

Mrs. Smith's Second Contract with GEICO

36. On June 4, 2014, Mrs. Smith's counsel faxed a letter to GEICO offering, on behalf of Mrs. Smith, to allow GEICO to continue to remain in possession of the evidence in

exchange for GEICO's renewed promise to hold and preserve that evidence while Mrs. Smith further investigated her possible lawsuit as required under Texas law. (See Exhibit E)

37. In response to Mrs. Smith's offer, on June 13, 2014, GEICO faxed Mrs. Smith's counsel an acceptance of that offer setting forth the terms of the second contract between Mrs. Smith and GEICO that had been executed on behalf of GEICO on June 11, 2014, as follows:

- a. That the Jeep be placed "on hold until further notice;"
- b. That the Jeep "not be sold without written authorization;"
- c. That the Jeep be "processed in accordance with IAA's Hold policy including full wrap and restricted access;" and,
- d. That "only parties with written authorization be permitted to access the vehicle."

(See Mrs. Smith's second contract with GEICO attached hereto as Exhibit F)

38. Less than one month after entering into this second written contract with Mrs. Smith, GEICO breached its promises to Mrs. Smith and sold the Jeep for \$25.00. That evidence was subsequently destroyed.

39. GEICO's breach of its written contract with Mrs. Smith has caused her significant monetary damages and extreme emotional distress.

Procedural history

40. On June 8, 2015, Mrs. Smith filed a lawsuit against FCA/Chrysler and GEICO arising from her husband's car accident in the United States District Court for the Eastern District of Texas (*Smith v. Chrysler, et al.*, Case No. 1:15-cv-218).

41. On August 10, 2015, Mrs. Smith filed her first amended complaint.

42. Mrs. Smith's first amended complaint asserted two claims against GEICO (breach of good faith and fair dealing, and violation of the Texas Insurance Code), both of which alleged

that GEICO breached its insurance policy with Mrs. Smith by destroying the remnants of the Subject Vehicle.

43. On April 8, 2016, the U.S. District Court for the Eastern District of Texas granted GEICO's motion for summary judgment because it found that GEICO did not breach any duty owed to Mrs. Smith *under its insurance contract* with Mrs. Smith.

44. Defendant GEICO's breach of its contract with Mrs. Smith and its fraudulent misrepresentation to her was not litigated in the prior federal proceeding, because the U.S. District Court inexplicably denied Mrs. Smith's request to amend her complaint to include those causes of action.

45. As a result of Defendant GEICO's breach of its contracts to store and preserve the Jeep and as a result of GEICO's fraudulent and negligent misrepresentations to Mrs. Smith, Plaintiff Mrs. Smith has suffered actual, consequential, and incidental damages.

COUNT I - BREACH OF CONTRACT (R&M)

46. Mrs. Smith incorporates and re-alleges paragraphs 1-45 as if fully set forth herein.

47. There was a valid and enforceable contract between Mrs. Smith and R&M pursuant to which R&M agreed and promised that it would store the remains of the Jeep and cause no further damage to that evidence beyond what was noted in the parties' contract in exchange for Mrs. Smith payment of R&M's fees. (See Exhibit B).

48. Mrs. Smith performed her obligations under the contract by causing R&M's fees to be paid in full.

49. Pursuant to the contract, while the Jeep was in R&M's possession, Mrs. Smith directed R & M that, "No one else has my permission to view the vehicle without consulting my attorney." (See Exhibit C).

50. In breach of its contractual obligations and Mrs. Smith's written directive, R&M released the Jeep to GEICO's agent, IAA, without Mrs. Smith's consent or permission.

51. As a result of this breach by R&M, that evidence was destroyed and Mrs. Smith has suffered significant pecuniary damages and emotional distress caused by R & M's breach.

COUNT II- BREACH OF CONTRACT/THIRD-PARTY BENEFICIARY (R & M)

52. Mrs. Smith incorporates and re-alleges paragraphs 1-51 as if fully set forth herein.

53. In the alternative, Mrs. Smith was an intended beneficiary of the contract governing R&M's towing and storage services of the Jeep.

54. Mrs. Smith deceased husband, Arthur Smith is specifically identified as R&M's customer in the contract.

55. Mrs. Smith knew of the contract and detrimentally relied on the rights created under the contract, namely that the remains of the Jeep that were evidence related to her husband's death and her legal rights would be preserved.

56. In writing to R&M authorizing an inspection of the Jeep, but stating that "no one else has my permission to view the vehicle without consulting my attorney," Mrs. Smith expressly assented to the contract that required R&M to store and maintain the Jeep causing no further damage to the same.

57. As a result of this breach by R&M, that evidence was destroyed and Mrs. Smith has suffered significant monetary damages and emotional distress as a result of R & M's breach.

COUNT III -PROMISSORY ESTOPPEL (R & M)

58. Mrs. Smith incorporates and re-alleges paragraphs 1-57 as if fully set forth herein.

59. In the alternative, Mrs. Smith asserts a claim against R & M under the theory of Promissory Estoppel. *See, e.g. Trevino & Assocs. Mech., L.P. v. Frost Nat. Bank*, 400 S.W.3d

139, 146 (Tex. App. 2013) (“Generally, promissory estoppel is a viable alternative to breach of contract.”).

60. R & M promised Mrs. Smith that it would hold and preserve the Jeep until she authorized its release.

61. It was reasonably foreseeable that Mrs. Smith would rely on R & M’s promise, since R & M knew that Mrs. Smith’s husband had been killed in a crash while driving the Jeep, and because R & M had been advised that no one was to be allowed to inspect the Jeep without Mrs. Smith’s attorney’s permission.

62. Mrs. Smith relied on R & M’s promise to her detriment; because of R & M’s promise, Mrs. Smith materially changed her position by deciding to not seek to take possession and control of the Jeep.

63. But for R & M’s promise, Mrs. Smith would have retrieved the Jeep and stored it in her own possession.

64. Mrs. Smith was damaged by her reasonable reliance on R & M’s promise because she was unable to fully inspect the Jeep; specifically, the power steering line and transmission oil cooler tubes that were defectively spaced from one another and were the subject of a recall by FCA.

65. R & M’s breach of its contract with Mrs. Smith and its breach of its representations to her caused her monetary damages and extreme emotional distress.

COUNT IV – BREACH OF FIRST CONTRACT (GEICO)

66. Mrs. Smith incorporates and re-alleges paragraphs 1-65 as if fully set forth herein.

67. Mrs. Smith and GEICO entered a Contract on or about July 19, 2013, pursuant to which GEICO agreed to hold and preserve the Jeep until Mrs. Smith could fully investigate and

pursue her possible legal claims. In exchange for this promise, Mrs. Smith agreed not to take possession and control of the vehicle.

68. This contract was executed by GEICO through its representative and employee, Micah Chambers. (See Exhibit D).

69. Mrs. Smith performed her obligations under the contract by foregoing any effort to take possession or control of that evidence from GEICO.

70. GEICO breached the contract on July 10, 2014, when it sold the Jeep for its scrap value without providing any notice to Mrs. Smith.

71. GEICO's breach of its contract with Mrs. Smith has caused her monetary damages and extreme emotional distress.

COUNT V-BREACH OF SECOND CONTRACT (GEICO)

72. Mrs. Smith incorporates and re-alleges paragraphs 1-71 as if fully set forth herein.

73. On May 23, 2014, Mrs. Smith, through her counsel, made a contractual proposal to GEICO requesting that in exchange for allowing GEICO to remain in possession of the Jeep, that GEICO "preserve all evidence including the ECM unit in the 2013 Jeep Wrangler referenced above involved in the accident in Rusk County on June 9, 2013." (See Mrs. Smith's offer attached as Exhibit E)

74. On June 13, 2014, GEICO accepted Mrs. Smith's offer through its contract signed and by Micah Chambers executed on behalf of Defendant GEICO as of June 11, 2014. (See Second Contract attached as Exhibit F)

75. Pursuant to this contract between Mrs. Smith and GEICO, GEICO promised:

76. that it would place the Jeep "on hold until further notice;"

77. that it "would not sell the vehicle;"

78. that the Jeep would be “processed in accordance with IAA’s HOLD policy including full wrap and restricted access;” and,

79. that “only parties with written authorization from our office will be permitted to access the vehicle.”

80. On July 10, 2014, less than one month after contractually agreeing to hold and preserve this evidence, GEICO sold the Jeep for its scrap value in breach of its contract with Mrs. Smith.

81. GEICO’s breach of its contract with Mrs. Smith has caused her monetary damages and extreme emotional distress.

COUNT VI – PROMISSORY ESTOPPEL (GEICO)

82. Mrs. Smith incorporates and re-alleges paragraphs 1-81 as if fully set forth herein.

83. In the alternative, Mrs. Smith asserts a claim against GEICO under the theory of Promissory Estoppel. *See, e.g. Trevino & Assocs. Mech., L.P. v. Frost Nat. Bank*, 400 S.W.3d 139, 146 (Tex. App. 2013) (“Generally, promissory estoppel is a viable alternative to breach of contract.”).

84. GEICO promised Mrs. Smith that it would hold and preserve the Jeep until resolution of her legal claims arising from her husband’s death.

85. It was reasonably foreseeable that Mrs. Smith would rely on GEICO’s promise, since GEICO was her car insurer, GEICO knew that Mrs. Smith’s husband had been killed in a crash while driving the Jeep, GEICO was aware that Mrs. Smith was seeking counsel to file a lawsuit arising from that crash, and GEICO was aware that Mrs. Smith needed an expert to investigate the Jeep as part of her lawsuit.

86. Mrs. Smith relied on GEICO's promise to her detriment; because of GEICO's promise, Mrs. Smith materially changed her position by deciding to not seek to take possession and control of the Jeep.

87. But for GEICO's promise, Mrs. Smith would have retrieved the Jeep and stored it in her own possession.

88. Mrs. Smith was damaged by her reasonable reliance on GEICO's promise because she was unable to fully inspect the Jeep; specifically, the power steering line and transmission oil cooler tubes that were defectively spaced from one another and were the subject of a recall by FCA.

89. GEICO's breach of its contract with Mrs. Smith and its breach of its representations to her caused her monetary damages and extreme emotional distress.

COUNT VII-FRAUDULENT MISREPRESENTATION (GEICO)

90. Mrs. Smith incorporates and re-alleges paragraphs 1-89 as if fully set forth herein.

91. GEICO misrepresented to Mrs. Smith through its employee, David Perry, that the remains of the Jeep could not be towed to Mrs. Smith's property for safe keeping because that would be a violation of Texas law.

92. This statement was a misrepresentation because Texas law has no such requirement.

93. GEICO made this misrepresentation to Mrs. Smith because GEICO wanted to ensure that it could receive \$25 for the scrap value of the Jeep, which it knowingly and intentionally withheld from Mrs. Smith.

94. GEICO knew that its representation was false, or it made that representation recklessly without any knowledge of the truth and as a positive assertion.

95. GEICO made this representation with the intent that Mrs. Smith would act on it and allow GEICO to continue possessing the Jeep.

96. Mrs. Smith acted in reliance on GEICO's misrepresentation by deciding not to seek to have the Jeep removed from GEICO's possession and stored on her property.

97. As a result of defendant GEICO's fraudulent misrepresentations to Mrs. Smith, and her reliance on said representations, she has suffered monetary damages and extreme emotional distress.

COUNT VIII- NEGLIGENT MISREPRESENTATION (GEICO)

98. Mrs. Smith incorporates and re-alleges paragraphs 1-97 as if fully set forth herein.

99. Defendant GEICO made a representation to Mrs. Smith in the course of its business as Mrs. Smith's insurance carrier that it would hold and preserve the Jeep.

100. GEICO also made a representation to Mrs. Smith that Texas law prohibited her from re-claiming her vehicle and storing it on her property.

101. Defendant GEICO's representation to Mrs. Smith was false information imparted to Mrs. Smith as guidance in the course of GEICO's business.

102. Defendant GEICO did not exercise reasonable care or competence in communicating its promise that it would hold and preserve the Jeep as evidenced by GEICO's sale of the Jeep for its scrap value for \$25 when it knew that Mrs. Smith's husband was killed when the Jeep crash and that Mrs. Smith was investigating the cause of the crash in her possible legal rights.

103. Mrs. Smith has suffered a pecuniary loss as well as extreme emotional distress in her justifiable reliance on GEICO's representation that it would hold and preserve the Jeep.

PRAYER FOR RELIEF

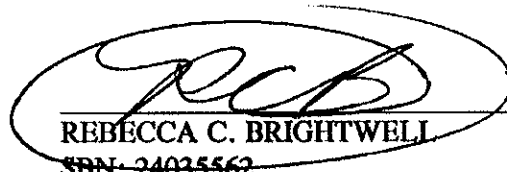
ACCORDINGLY, Mrs. Smith prays that this Court enter judgment in her favor and against the Defendants R & M and GEICO, including her attorney's fees and costs, and for such other and further relief which this honorable Court deems just and reasonable.

REQUEST FOR TRIAL BY JURY

Mrs. Smith requests trial by jury on all issues for which jury trial is allowed.

Dated: June 16, 2017

Respectfully Submitted,



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LUFKIN, TX 75901
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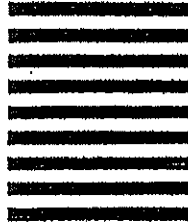
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(PHV to be applied for)
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ATTORNEY FOR PLAINTIFF
RAMONA M. SMITH, INDIVIDUALLY
AS ADMINISTRATOR OF THE
ESTATE OF ARTHUR SMITH

Exhibit A



RECALL ADMINISTRATION 482-00-85
PO BOX 218008
AUBURN HILLS MI 48321-9969



BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO. 9941 DETROIT MI
POSTAGE WILL BE PAID BY ADDRESSEE

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



CHRYSLER GROUP LLC

CIMS 482-00-85
PO Box 218008
Auburn Hills MI USA 48321-8008
Electronic Service Requested

PRESORTED
FIRST CLASS MAIL
U.S. POSTAGE
PAID
PERMIT #2655
DETROIT, MI

IMPORTANT!

SAFETY RECALL NOTICE

XX #1

DL531811 N28 0120622
ARTHUR SMITH
10391 STATE HIGHWAY 87 S
SHELBYVILLE, TX 75973-2946



0120622/#60991



SAFETY RECALL N28 / NHTSA 13V-234 TRANSMISSION OIL COOLER TUBE

Dear ARTHUR SMITH

This interim notification letter is sent to you in accordance with the requirements of the National Traffic and Motor Vehicle Safety Act.

Chrysler has decided that a defect, which relates to motor vehicle safety, exists in some 2012 and 2013 model year Jeep, Wrangler vehicles equipped with an automatic transmission.

The problem is... The transmission oil cooler tube on your vehicle (VIN: 1C4AJWAGXDL531811) may inadvertently come in contact with the power steering fluid return tube. This tube-to-tube contact could eventually cause the transmission oil cooler tube to develop a wear hole and leak. A loss of transmission fluid could cause transmission damage and if the leaking transmission fluid comes in contact with an ignition source, cause an underbody fire.

What your dealer will do... Chrysler intends to repair your vehicle free of charge (parts and labor). However, the parts required to provide a permanent remedy for this condition are currently not available. Chrysler is making every effort to obtain these parts as quickly as possible. Chrysler will contact you again by mail, with a follow-up recall notice, when the remedy parts are available.

What you must do to ensure your safety... Once you receive your follow-up recall notice in the mail, simply contact your Chrysler, Jeep or Dodge dealer right away to schedule a service appointment. Ask the dealer to hold the parts for your vehicle or to order them before your appointment.

NOTE: In the unlikely event that your vehicle develops a transmission fluid leak, bring the vehicle to your dealer for diagnosis and repair.

If you need help... If you have questions or concerns which your dealer is unable to resolve, please contact the Chrysler Group Recall Assistance Center at 1-800-853-1403.

Please help us update our records by filling out the attached prepaid postcard if any of the conditions listed on the card apply to you or your vehicle. You may also update this information on the web at www.chrysler.com/ownersreg.

If you have already experienced this condition and have paid to have it repaired, please send your original receipts and/or other adequate proof of payment to the following address for reimbursement: Chrysler Customer Assistance, P.O. Box 21-8007, Auburn Hills, MI 48321-8007, Attention: Reimbursement. Once we receive and verify the required documents, reimbursement will be sent to you within 60 days.

If your dealer fails or is unable to remedy this defect without charge and within a reasonable time, you may submit a written complaint to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Ave., S.E., Washington, DC 20590, or call the toll-free Vehicle Safety Hotline at 1-888-327-4236 (TTY 1-800-424-9153), or go to <http://www.safercar.gov>.

We're sorry for any inconvenience, but we are sincerely concerned about your safety. Thank you for your attention to this important matter.

Customer Services / Field Operations
Chrysler Group LLC
Notification Code N28

Note to lessors receiving this recall: Federal regulation requires that you forward this recall notice to the lessee within 10 days.



0120622/60991

PLEASE HELP US UPDATE OUR RECORDS IF ANY OF THE FOLLOWING CONDITIONS APPLY

VIN (Last 8 Characters of Vehicle Identification Number)

Notification Code

DL531811

N28

This service was previously performed on my vehicle (check one if applicable):

- ☐ My vehicle was inspected and found to be ok.
☐ My vehicle was repaired.

This vehicle was (check one if applicable):

- ☐ scrapped ☐ stolen ☐ exported

This vehicle was sold to (check one if applicable):

- ☐ A dealer, or someone whose name and address is unknown.
☐ Someone other than a dealer (type or print the new owner's name and address below).

Date of sale: _____

Updated name and address (type or print the new owner's name and address or your new name and/or address if it has changed):

Owner's title (check one if applicable):

- ☐ Mr. ☐ Miss ☐ Mr. & Mrs. ☐ Dr.
☐ Mrs. ☐ Ms. ☐ Rev. ☐ Business

First Name _____ MI _____

Last Name _____

Street Address _____

City _____

State _____ Zip Code _____

Email Address _____

Exhibit B

U06378

TOW OPERATOR NAME: JASON HORN

TOW OPERATOR LIC.# 24656 / T2316F

TYPE OF TOW: ☐ OT ☐ PPI ☒ IM

TIME OF DISPATCH: 2:15 ☐ AM ☐ PM ARRIVAL TIME: 2:40 ☐ AM ☐ PM

AGENCY/PERSON REQUESTING TOW: RCSO

ADDRESS: _____

PHONE: _____

VEHICLE HOLD: ☐ YES ☒ NO

☐ IMPOUND SHEET # _____

☐ OTHER _____

R & M TOWING AND RECOVERY

TDLR # 000344720

1127 Ohio St.
Henderson, TX 75652
903-655-8880
8817443V8F

1395 US Hwy. 79 N.
Carthage, TX 75633
903-690-0577
983117V8F

216 E. Access Rd.
Nacogdoches, TX 75965
936-550-9996
936-550-0068
Fax 903-657-8589
0644405V8F

DATE OF TOW: July 6-9-13 TIME OF TOW: _____ ☐ AM ☐ PM

LOCATION OF VEHICLE: Hwy 259

LOCATION TOWED TO: R & M Towing

TIME DROPPED OFF: _____ ☐ AM ☐ PM PERSON ACCEPTING: _____

CUSTOMER NAME: Arthur Smith PHONE: _____

DRIVER NOTES: 10391 Hwy 87 S
Shelbyville, TX 75973

YEAR	MAKE	MODEL	COLOR	LICENSE#	STATE	DOORS	V.I.N.
2013	Jeep	Wrangler	orange	BLF7097	TX		1CAAJWAGXDL531811

TOWING CHARGES DESCRIPTION		AMOUNT
* Wreck *		
SPECIAL EQUIPMENT: <input type="checkbox"/> SLING/HOIST <input type="checkbox"/> GOJAKS <input checked="" type="checkbox"/> FLATBED <input type="checkbox"/> WHEEL LIFT <input type="checkbox"/> DOLLIES <input type="checkbox"/> 5TH WHEEL <input type="checkbox"/> SNATCH BLOCKS <input type="checkbox"/> AIR BAGS <input type="checkbox"/> OTHER:		
MILEAGE: START _____ MILEAGE END: _____ TOTAL MILES TOWED: _____ X \$ _____ PER MILE →	TOWING	200 ⁰⁰
WINCH TIME START: _____ <input type="checkbox"/> AM <input type="checkbox"/> PM WINCHING: \$ _____ PER HOUR X _____ HOURS →	SPECIAL EQUIPMENT <u>Flat Bed</u>	65 ⁰⁰
WINCH TIME END: _____ <input type="checkbox"/> AM <input type="checkbox"/> PM	MILEAGE	30 90 ⁰⁰
TYPE OF SERVICE: <input type="checkbox"/> LOCKOUT <input type="checkbox"/> TIRE CHANGE <input type="checkbox"/> FUEL REPLACEMENT <input type="checkbox"/> OTHER _____	WINCHING	125 ⁰⁰
OTHER: _____	SERVICE FEE	
VEHICLE/INVENTORY NOTES: _____	LABOR	125 ⁰⁰
STORAGE: <u>R & M</u> DATE RELEASED: <u>7-16-15</u> ONE HOUR NOTICE RECEIVED: _____ VSF: _____	CLEAN UP	125 ⁰⁰
DATE ENTERED: <u>6-9-13</u> TIME RELEASED: _____ <input type="checkbox"/> AM <input type="checkbox"/> PM	TAX	
TIME ENTERED: <u>4:30</u> <input type="checkbox"/> AM <input type="checkbox"/> PM	TOW FEES TOTAL	1730 ⁰⁰
GOVERNMENT ENTITY FEE EXPLANATION: _____	STORAGE CHARGES	
VEHICLE RELEASED TO: <u>Clad Morgan</u>	STORAGE	1780 ⁰⁰
TYPE OF IDENTIFICATION USED: <u>X 3529</u>	NOTIFICATION FEE	50 ⁰⁰
IMPOUNDMENT FEE: _____ Date Performed: <u>6-9-13</u>	IMPOUNDMENT FEE	20 ⁰⁰
<input checked="" type="checkbox"/> MOTOR VEHICLE RECORD INQUIRY <input checked="" type="checkbox"/> SECURE VEHICLE <input type="checkbox"/> INVENTORY	GOVERNMENT ENTITY FEE	
PAYMENT: <input type="checkbox"/> CASH <input checked="" type="checkbox"/> CHECK	SALES TAX	64 35
CC#: _____ EXP. DATE: _____	STORAGE FEES TOTAL	914 36
CC AUTHORIZATION: _____	GRAND TOTAL	1644 35
CHECK# _____		

TOWING COMPANY NOT RESPONSIBLE FOR DAMAGES NOTED ABOVE AND PERSONAL PROPERTY LEFT IN VEHICLE, OR FOR VEHICLE ITSELF AFTER DELIVERING TO ANY LOCATION, ESPECIALLY IN CASES OF FIRE, THEFT, VANDALISM, OR ANY OTHER CAUSE BEYOND OUR CONTROL.

DIRECT ALL COMPLAINTS TO:
Texas Department of Licensing and Regulation
P.O. Box 12167
Austin, Texas 78711
<http://www.license.state.tx.us/complaints>
or email: Towing@license.state.tx.us

MD/EA Inc. One Idea Way, Caldwell, ID 83605-0002 • Call Toll Free 1-800-635-9281 • Item No. 1182

Exhibit C

I Ramona L. Smith
hereby authorize Cliff Carpenter,
John Ament, Nick Peacock,
Glenda Zimmer,
Lynda Kay Russell, and
Sharla Foster to view and
inspect the 2013 Jeep Wrangler.

No one else has my permission
to view the vehicle without consulting
my attorney.

Ramona L Smith
wife

Exhibit D

Jul 19, 2013 10:53AM

No: 5374 P. 1

Jul 18, 2013 4:23PM

P. 1

<IAAI GEN 9801744 GENERAL D0CB>
Stock# 11855671 Hold Request

REQUEST TO PLACE A VEHICLE ON HOLD

To: Insurance Auto Auctions Fax: (903) 552-0210

Location: Longview

Claim Number: 0112807440101013 IAA Stock Number: 020-11655671

Year: 2013 Make: JEEP Model: WRANGLER

VIN: 1C4A1WAGXDL341811

Reason for Hold: Fatality accident

On behalf of Mona Smith, Please place this vehicle on hold until further notice. Do not sell this vehicle until you receive written authorization from our company to do so. We agree that this vehicle will be processed in accordance with IAA's HOLD policy including full wrap and restricted access. Only parties with written authorization from our office will be permitted to access the vehicle.

Micah Chambers
Signature

Claims Examiner
Title

Micah Chambers
Printed Name

7/19/13
Date

Phone: 972 701 1706

Email: micchambers@geico.com

Additional Email: jcoody@geico.com

Exhibit E

Jun. 11, 2014, 2:53PM TAAI REBECCA C. BRIGHTWELL, ATTORNEY (FAX) 936-639-2554 No. 4055 P. 3



June 4, 2014

IAA
Attn: Robert Dunning
5577 U.S. Hwy 80 East
Longview, Texas 75606

Geico (Government Employees Insurance Company)
P.O. Box 509050
San Diego, California 92150-9050

Re: DEMAND FOR PRESERVATION OF INFORMATION ON 2013 JEEP WITH
LICENSE PLATE BLE7097.

Regarding the Rusk County Accident involving the vehicle referenced above and Arthur Smith,
deceased.

To Whom It May Concern:

I represent Ramona Smith, Ramona Allen, and Glenda Zimmet in a suit to recover all damages
and compensation to which my client or any child of my client is entitled to.

This letter is sent to inform you to preserve all evidence, including the ECM unit in the 2013
Jeep Wrangler referenced above involved in the accident in Rusk County on June 9, 2013. Please
preserve all equipment, parts and manuals used in relation with the ECM Unit and both vehicles
referenced above involved in the accident. It is our intent to seek electronic information during
the course of discovery, and to put you on notice of your obligation to preserve all such
evidence. Under Texas law, once a party knows that an action has been brought or reasonably
should know that there is a substantial chance that the claim will be filed, that party has a duty to
preserve evidence in the party's possession and control that will be relevant and material to the
claim. Wal-Mart Stores, Inc. v. Johnson, 196 S.W.3d 718, 722 (Tex. 2003).

We request that you comply with these legal obligations and preserve all potentially relevant
electronic or magnetic documents and information. For evidence preservation purposes, it is
necessary that electronic data continue to be preserved in a format that maintains metadata,
maintains file search ability, and allows access to formulas (such as those used in spreadsheets).
For instance, it is not acceptable to convert word processing document files into "TIF" files,
which maintain an image of the file, but do not preserve hidden data.

111 GASEIGHT BOULEVARD, SUITE B
TELEPHONE: 936-639-2550 RCB@BRIGHTWELLAW.COM

LUCKIN, TEXAS 75904
FAX: 936-639-2554

Jun. 11. 2014, 2:54PM, re LAAT BECCA C. BRIGHTWELL ATTORNEY (FAX) 936 639 2554 No. 4055 P. 4
P. 000, 000

For purposes of this letter, metadata is defined as "data about data." That is, the information that is generated when computer files are created, modified, or deleted, or when emails are created, sent, or received, and that provides a history of the creation, editing, manipulation, and distribution of such files and emails.

While we will be seeking discovery of all relevant data, please be informed that some items are of particular interest to us, and these items will be the subject of initial requests:

- All emails sent or received between the dates of June 9, 2013, and present date that either relate to the subject matter of this law suit, or were sent or received by R&M Towing & Recovery and Geico (Government Employees Insurance Company) representatives, employees, adjusters, and risk management members.
- All electronic documents, including text files and spreadsheets that relate in any way to the accident in question.

At this time, we are not requesting the production of electronic data that is not reasonably available during the ordinary course of business.

We specifically request that you institute a litigation hold, halting routine back-up procedures that may result in destruction of electronic data, and informing all employees of their obligation to cease deletion or destruction of information, whether in electronic or paper form. Additionally, it is important that no computer equipment be discarded or reformatted, unless the information contained on that equipment is preserved. For instance, mirror images should be made of any hard drives before an employee's computer is reformatted. If any computer systems or software is upgraded during the course of this litigation, adequate steps must be taken to ensure that pre-existing data remains accessible.

Please be informed that, while we presume you will comply with your evidence preservation obligations, we will vigorously pursue any remedies for spoliation or destruction of evidence. Such remedies may include an adverse inference instruction given at trial, or even the striking of your pleadings.

The policy number pertaining to the insured on this vehicle is 4181-17-68-28 for the 2013 Jeep Wrangler with License Plate number BLF7097.

If you have any questions concerning this data preservation demands, please contact us. You may reach Rebecca Cousine Brightwell, the attorney who will be coordinating our discovery efforts by telephone at (936) 639-2550 or by fax at (936) 639-2554.

We will hope to meet with you soon, and develop a cooperative approach to managing electronic discovery in this matter.

Very truly yours,



<LAAT GEN 12063252 GENERAL.DOCX>
Backup 12063252, Document (Hold Related)

JUN 11 2014 2:54PM

IAA

REBECCA C. BRIGHTWELL ATTORNEY (FAX) 936-639-2554

No. 4055

P. 5
P. 0002.008



LAW OFFICES OF REBECCA C. BRIGHTWELL, P.L.L.C.

REBECCA COUSINS BRIGHTWELL

Email: rcb@brightwelllaw.com

RCB/radn

STAMP: FAX SEN 12063292 GENERAL DDCX
Stuck # 1160673, File, Document, Hold, NoTepd

115 GASLIGHT BOULEVARD SUITE B
TELEPHONE: 936-639-2450

RCB@BRIGHTWELLLAW.COM

CUPERTINO, TEXAS 75904
FAX: 936-639-2554

Exhibit F

GEICO Fax



Government Employees Insurance Company
GEICO General Insurance Company
GEICO Indemnity Insurance Company
GEICO Casualty Insurance Company

■ Chevy Chase, MD.	■ Dallas, TX
■ Fredericksburg, VA	■ Lakeland, FL
■ Woodbury, NY	■ Honolulu, HI
■ Macon, GA	■ Coralville, IA
■ Poway, CA	■ Virginia Beach, VA

To: 19366392554
From: ClaimsAtlas@geico.com
Date: June 13, 2014 18:23:54 GMT
Subj: ::DEFA::cc:4540188||cc:5097613::Claim Documents (0112907440101013)
Pages: 3

Date: June 13, 2014

To: Rebecca Cousins-brightwell

Fax Number: 936-639-2554

From: Micah Chambers 800-841-5432 x1706
Government Employees Insurance
Company
P.O. Box 509105
San Diego, CA - 92150-9930

Subject: Claim Documents (0112907440101013)

Message:

=====

This email/fax message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution of this email/fax is prohibited. If you are not the intended recipient, please destroy all paper and electronic copies of the original message.

(Page 1 of 1)

Jul. 18. 2013 4:23PM

No. 6301 P. 1



REQUEST TO PLACE A VEHICLE ON HOLD

To: Insurance Auto Auctions Fax: (903) 553-0210

Location: Longview

Claim Number: 0112907440101013 IAA Stock Number: 000-11655671

Year: 2013 Make: JEEP Model: WRANGLER

VIN: 1C4AJWAGXDL31811

Reason for Hold: PENDING LITIGATION

On behalf of REBECCA COSSINS BRIGHTWELL / Ramona Smith, Please place this vehicle on hold until further notice. Do not sell this vehicle until you receive written authorization from our company to do so. We agree that this vehicle will be processed in accordance with IAA's HOLD policy including full wrap and restricted access. Only parties with written authorization from our office will be permitted to access the vehicle.

Mich C
Signature

CLAIMS EXAMINER
Title

MICAH CHAMBERS
Printed Name

6/11/2014
Date

Phone: 972-701-1706

Email: Michchambers@geico.com

Additional Email: _____

EXHIBIT

1-B



June 16, 2017

Ms. Lori Oliver
Shelby County District Clerk
P.O. Box 1953
Center, TX 75935

Re: Cause No.17CV33998; *Ramona Smith, Individually and as Administrator of the Estate of Arthur Smith vs. Government Employees Insurance Company("GEICO") and R&M Towing and Recovery ("R&M")*; In the District Court of Shelby County, Texas

Dear Ms. Oliver:

I respectfully request that you prepare and issue two citations in this matter to the following Defendants:

1. Government Employees Insurance Company "GEICO"
Registered Agent: James G. Brown
201 Spring Valley Road
Dallas, TX 75244
2. R&M Towing and Recovery
1127 Ohio Street
Henderson, TX 75652

Please email the citations to our office. I will forward the citation for service at a later date.
Thank you for giving this matter your prompt attention.

Very truly yours,

LAW OFFICES OF REBECCA C. BRIGHTWELL, P.L.L.C.

REBECCA COUSINS BRIGHTWELL
RCB/tn

EXHIBIT

1-C

Cause No. 17CV33998

RAMONA L. SMITH, INDIVIDUALLY
AND AS ADMINISTRATOR OF THE
ESTATE OF ARTHUR SMITH

V.

GOVERNMENT EMPLOYEES
INSURANCE COMPANY ("GEICO") AND
R&M TOWING AND RECOVERY ("R&
M")

IN THE DISTRICT COURT
123RD/273RD JUDICIAL DISTRICT
SHELBY COUNTY, TEXAS

TO: GOVERNMENT EMPLOYEES INSURANCE COMPANY "GEICO", Registered Agent: James G. Brown, 201 Spring Valley Road, Dallas, TX 75244:

Notice to defendant: You have been sued. You may employ an attorney. If you, or your attorney, do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the first Monday following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

You are hereby commanded to appear by filing a written answer to the **COMPLAINT AND REQUEST FOR JURY TRIAL** at or before 10:00 o'clock A.M. on the Monday next after the expiration of 20 days after the date of service of this citation, before the 123RD/273RD Judicial District Court of Shelby County, Texas at the Courthouse in said County in Center, Texas. Said Plaintiff's Petition was filed in said court on the 16th day of June, 2017 in the above entitled cause.

The nature of Plaintiff's demand is fully shown by a true and correct copy of **COMPLAINT AND REQUEST FOR JURY TRIAL** accompany this citation and made a part hereof.

Issued and given under my hand and seal of said Court at Shelby County Texas this 19th day of June, 2017.

Attorney for Plaintiff or Plaintiffs:
REBECCA BRIGHTWELL
415 S. First Street, Suite 430
Lufkin, TX 75901
(936) 639-2550

DARREN M. VANPUYMBROUCK
311 South Wacker Drive, Suite 3000
Chicago, IL 60606
(312) 360-6000

District Clerk of the Court:
Lori Oliver
Shelby County, Texas

By 
Nicol Shedd, Deputy Clerk



Service Return

Came to hand on the _____ day of _____, 20____, at _____ m and executed on the _____ day of _____, 20____, at _____ M by delivering to the within named _____ in person a true copy of this citation, with attached copy(ies) of the _____ at _____

☐ Not executed. The diligence use in finding defendant being _____

☐ Information received as to the whereabouts of defendant being _____

Service Fee: \$ _____
Service ID No. _____

Sheriff/Constable
County, Texas

Deputy/Authorized Person

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME ON _____, 20____.

Notary Public

EXHIBIT

1-D

Cause No. 17CV33998

RAMONA L. SMITH, INDIVIDUALLY
AND AS ADMINISTRATOR OF THE
ESTATE OF ARTHUR SMITH

V.

GOVERNMENT EMPLOYEES
INSURANCE COMPANY ("GEICO") AND
R&M TOWING AND RECOVERY ("R&
M")

IN THE DISTRICT COURT
123RD/273RD JUDICIAL DISTRICT
SHELBY COUNTY, TEXAS

TO: R&M TOWING AND RECOVERY, 1127 Ohio Street, Henderson, TX 75652:

Notice to defendant: You have been sued. You may employ an attorney. If you, or your attorney, do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the first Monday following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

You are hereby commanded to appear by filing a written answer to the **COMPLAINT AND REQUEST FOR JURY TRIAL** at or before 10:00 o'clock A.M. on the Monday next after the expiration of 20 days after the date of service of this citation, before the 123RD/273RD Judicial District Court of Shelby County, Texas at the Courthouse in said County in Center, Texas. Said Plaintiff's Petition was filed in said court on the 16th day of June, 2017 in the above entitled cause.

The nature of Plaintiff's demand is fully shown by a true and correct copy of **COMPLAINT AND REQUEST FOR JURY TRIAL** accompany this citation and made a part hereof.

Issued and given under my hand and seal of said Court at Shelby County Texas this 19th day of June, 2017.

Attorney for Plaintiff or Plaintiffs:
REBECCA BRIGHTWELL
415 S. First Street, Suite 430
Lufkin, TX 75901
(936) 639-2550

District Clerk of the Court:
Lori Oliver
Shelby County, Texas

By  Nicol Shedd, Deputy Clerk



DARREN M. VANPUYMBROUCK
311 South Wacker Drive, Suite 3000
Chicago, IL 60606
(312) 360-6000

Service Return

Came to hand on the _____ day of _____, 20____, at _____ m and executed on the _____ day of _____, 20____, at _____ M by delivering to the within named _____ in person a true copy of this citation, with attached copy(ies) of the _____ at _____.

☐ Not executed. The diligence use in finding defendant being _____.

☐ Information received as to the whereabouts of defendant being _____.

Service Fee: \$ _____

Service ID No. _____

Sheriff/Constable

County, Texas

Deputy/Authorized Person

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME ON _____, 20____.

Notary Public

EXHIBIT

1-E

Requested Citations 17CV33998

From: district.clerk@co.shelby.tx.us
Sent: Mon, Jun 19, 2017 at 9:20 am
To: Rebecca Brightwell

Document 20170619_68937 CIT ISS TO GEICO AND EMAILED TO ATTY FOR SERVICE - NS.pdf (79.7 KB)
Document 20170619_68938 CIT ISS TO R and M TOWING AND RECOVERY AND EMAILED TO ATTY FOR SERVICE - NS.pdf (82.6 KB)
Document 20170616_68843 COMPLAINT AND REQUEST FOR JURY TRIAL - NS.pdf (1.5 MB) — **Download all**

I have attached the citations you requested issued in the above cause along with the documents necessary for service.

Please let me know if you have any trouble receiving them.

Nicol Shedd
Deputy Clerk

EXHIBIT

1-F

17CV33998

Filed 7/5/2017 1:41 PM

LORI OLIVER, DISTRICT CLERK - P.O. DRAWER 1953, CENTER, TX 75935

936-598-4164

Lori Oliver

District Clerk

Shelby County, Texas

Pamela Whitton

Cause No. 17CV33998

RAMONA L. SMITH, INDIVIDUALLY
AND AS ADMINISTRATOR OF THE
ESTATE OF ARTHUR SMITH

IN THE DISTRICT COURT

123RD/273RD JUDICIAL DISTRICT

V.

SHELBY COUNTY, TEXAS

GOVERNMENT EMPLOYEES
INSURANCE COMPANY ("GEICO") AND
R&M TOWING AND RECOVERY ("R&
M")

TO: R&M TOWING AND RECOVERY, 1127 Ohio Street, Henderson, TX 75652:

Notice to defendant: You have been sued. You may employ an attorney. If you, or your attorney, do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the first Monday following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

You are hereby commanded to appear by filing a written answer to the COMPLAINT AND REQUEST FOR JURY TRIAL at or before 10:00 o'clock A.M. on the Monday next after the expiration of 20 days after the date of service of this citation, before the 123RD/273RD Judicial District Court of Shelby County, Texas at the Courthouse in said County in Center, Texas. Said Plaintiff's Petition was filed in said court on the 16th day of June, 2017 in the above entitled cause.

The nature of Plaintiff's demand is fully shown by a true and correct copy of COMPLAINT AND REQUEST FOR JURY TRIAL accompany this citation and made a part hereof.

Issued and given under my hand and seal of said Court at Shelby County Texas this 19th day of June, 2017.

Attorney for Plaintiff or Plaintiffs:

REBECCA BRIGHTWELL
416 S. First Street, Suite 430
Lufkin, TX 75901
(936) 639-2550

District Clerk of the Court:

Lori Oliver
Shelby County, Texas

By Nicol Sheppard
Nicol Sheppard, Deputy Clerk



DARREN M. VANPUYMBROUCK
311 South Wacker Drive, Suite 3000
Chicago, IL 60606
(312) 360-6000

Service Return

Came to hand on the 23 day of June, 2017, at 10:12 AM and executed on the 23rd day of June, 2017, at 4:00 AM by delivering to the within named Cynthia M. Bride - R&M in person a true copy of this citation, with attached copy(ies) of the Complaint and Request for Jury Trial - Cause no. 17-cv-33998 at 1127 Ohio St., Henderson, Texas 75652.

[] Not executed. The diligence used in finding defendant being _____

[] Information received as to the whereabouts of defendant being _____

Service Fee: \$ _____

Service ID No. 12589Exp. 4-30-2020

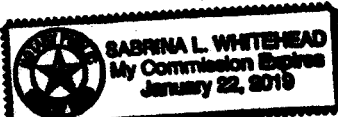
Rusk Sheriff/Constable
County, Texas

Paul Rusk
Deputy/Authorized Person

On this day, June 25, 2017, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME ON June 25, 2017.

Sabrina L. Whitehead
Notary Public



EXHIBIT

1-G

R&M TOWING
1127 OHIO

HENDERSON TEXAS

903-655-6880 FAX # 903-657-8589

FILED
LORI OLIVER
DISTRICT CLERK

2017 JUL 12 P 1:22

DISTRICT COURT
SHELBY COUNTY, TEXAS

BY ME DEPUTY

Cause # 17cv33998

My company R&M Towing was dispatch by Rusk Co Sheriff Dept. to pick up a wrecked jeep on June 9, 2013. On July 16, 2013 Insurance Auto Auction picked up the jeep with a VSF011. Under state law we are required to release a vehicle when presented this form. We believe that we have acted under Texas department of regulation administrative rules 85.710 I have attached copies of VSF form VSF011 and the rules we work under.

Roger McBride



Removal and/or Inspection of a Motor Vehicle at a VSF

This Form is Approved by the Texas Department of Licensing and Regulation

Check one of the following boxes:

SECTION ONE

- ☐ Box 1: I am an immediate family member (parent, spouse, brother, sister, or child) of the owner of the vehicle. When selected, this form may be used as the Affidavit of Right of Possession Form.
- ☐ Box 2: I am an authorized representative of the owner of the vehicle.
- ☒ Box 3: I am an authorized representative of an insurance company authorized to conduct business in the State of Texas.

Check the applicable box:

SECTION TWO

- ☒ I will remove the vehicle;
- ☐ I will inspect the vehicle.

Describe the motor vehicle and person authorized to inspect or remove the vehicle:

SECTION THREE

Vehicle Year, Make and Model: 2013 Jeep Wrangler

VIN or License Plate Number: 1C4AJWAGXDL531811

Describe the person removing or inspecting the motor vehicle:

First and Last Name: Clark Morgan

Company Name (if a representative of a company): TRIPLE H Towing

If a tow truck is used to remove the vehicle, complete the following:

Tow Operator TDLR Lic. No: 3529

Tow Truck TDLR No: 0006140367003 TM

Complete this section ONLY IF you checked Box 1 or Box 2 in SECTION ONE above:

SECTION FOUR

On this date appeared _____ who upon oath declared that:

- ☐ I am the owner of the vehicle and authorize the person or company named in this document; [or]
- ☐ I am an immediate family member and authorized by the owner to remove or inspect the motor vehicle described above.

The authority granted herein is limited to either (i) inspecting the vehicle or (ii) making payment to and removing the described vehicle from _____ (name of the Vehicle Storage Facility).

This Authority to Act shall expire the earlier of three (3) days from its date of execution, or at an earlier date if revoked by me in writing, or when the motor vehicle is returned to my possession.

Signed this _____ day of _____, 20____

Signature: _____

Subscribed and sworn to before me on this _____ day of _____, 20____.

Notary Signature: _____

Notary Public, State of _____

My commission expires: _____

Complete this section ONLY IF you checked Box 3 in SECTION ONE above:

SECTION FIVE

I am a duly authorized licensed Insurance Adjuster. I work for or represent GEICO INSURANCE
(Name of Insurance Company) authorized to conduct business in the State of Texas. My Texas Department of Insurance Adjuster License # is: 114977. The claim related to this vehicle settled or, prior to settlement, the vehicle owner expressly authorized its inspection and/or removal.

Signature: [Signature]

Date: 7-16-13

Printed Name: Colin's CLARK

Insurance Claim#: 0112907440101013

I understand, acknowledge, and agree that by typing my name on this document, my typed name is an electronic signature and this document has the same legally binding consequence as if executed with a traditional signature.



LICENSE TYPES

ONLINE SERVICES

CONTINUING EDUCATION

SEARCH VERIFY

either:

- (A) the insurer, within three business days of the insurer presenting the proof of loss claim form; or
- (B) the tow truck operator, at the time the tow truck operator presents a copy of the notice of right to possession for salvage form to the VSF.

(3) The VSF may provide the copy of the tow ticket to the insurer, via regular mail, facsimile, or by other electronic means, provided the insurer provides the VSF with a specific mailing address, facsimile phone number, web address or email address to which to send the tow ticket.

(d) A VSF may not request a vehicle owner or operator to sign an authorization form for a tow, repair or any other service if the storage of the vehicle is the result of a tow initiated by law enforcement.

85.709. Responsibilities of Licensee—Unpermitted Tow Trucks Prohibited. *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective May 3, 2010, 35 TexReg 3482)*

Unless authorized by another law or regulation, a VSF shall not allow a tow truck that is not permitted under Texas Occupations Code, Chapter 2308, to enter the storage area of the facility.

85.710. Release of Vehicles. *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective May 3, 2010, 35 TexReg 3482; amended effective September 1, 2010, 35 TexReg 7786; amended effective January 16, 2012, 37 TexReg 112; amended effective August 15, 2013, 38 TexReg 5060; amended effective March 15, 2014, 39 TexReg 1704)*

(a) Release of vehicles. The VSF must comply with the following requirements when releasing vehicles.

(1) The VSF shall comply with all provisions of Texas Occupations Code, Chapter 2308, Subchapter J, relating to the rights of the owner of a stored vehicle, including providing the name, address, and telephone number of:

- (A) each justice court in the county from which the vehicle was towed or, for booted vehicles, the county in which the parking facility is located, or the address of an Internet website maintained by the Office of Court Administration of the Texas Judicial System that contains the name, address, and telephone number of each justice court in that county; and
- (B) the name, address and telephone number of the person or law enforcement agency that authorized the tow.

(2) The VSF shall provide the owner or the owner's representative with a tow ticket. The tow ticket may be combined with a VSF Invoice; provided, the combined tow ticket and VSF Invoice comply with the following requirements:

- (A) tow charges must be separated from VSF storage charges and each category of charges must be preceded by a heading or label identifying the charges as 'Tow Charges' or 'Storage Charges';
- (B) tow charges must appear on the combined statement of charges exactly as stated on the tow ticket prepared by the tow operator and provided to the VSF at the time the vehicle is presented for storage; and
- (C) the combined statement of charges meet and contain all required elements of a separate VSF invoice and tow ticket; provided the license number and name of the tow operator may be excluded.

(3) The VSF shall allow the vehicle owner or authorized representative to obtain possession of the vehicle, including payment at the location of the stored vehicle, at any time between the hours listed on the facility information sign posted as described in §85.1003, upon payment of all fees due, presentation of valid identification (Texas drivers license or other state or federally issued photo identification), and upon presentation of:

- (A) a notarized power-of-attorney;
- (B) a court order;
- (C) a certificate of title;
- (D) a tax collector's receipt and a vehicle registration renewal card accompanied by a conforming identification;
- (E) name and address information corresponding to that contained in the files of the Texas Department of Motor Vehicles;



LICENSE TYPES

ONLINE SERVICES

CONTINUING EDUCATION

SEARCH / VERIFY

(n) the most recent version of a department-approved form or electronic version of a department-approved form published on the department's website, www.tdlr.texas.gov; which the VSF must make available to the vehicle owner or person seeking possession of or access to the vehicle; or

(l) evidence of financial responsibility (insurance card), as required by Transportation Code §60.1.051, as an additional form of identification that establishes ownership or right of possession or control of the vehicle.

(4) A VSF may not refuse to release a vehicle to the owner or operator of the vehicle or require a sworn affidavit of the owner or operator of the vehicle solely because the owner or operator presents valid photo identification issued by this state, another state, or a federal agency that includes a different address than the address contained in the title and registration records of the vehicle.

(5) Paragraph (3) does not require a VSF to release a vehicle to the owner or operator of the vehicle if the owner or operator of the vehicle does not:

- (A) pay the charges for services regulated under this chapter or Chapter 86 of this title, including charges for and associated with delivery or storage of the vehicle; and
- (B) present valid photo identification issued by this state, another state, a federal agency or a foreign government.

(6) If it accepts vehicles 24 hours a day, all VSFs shall have vehicles available for release 24 hours a day within one hour's notice.

(7) If a VSF does not accept vehicles 24 hours a day, such facility must have vehicles available for release within one hour between the hours of 8:00 a.m. and midnight Monday-Saturday and from 8:00 a.m. to 5:00 p.m. on Sundays except for nationally recognized holidays. It is not the intent of this section to require release of vehicles after midnight, and refusal to release after that time, even with notice after 11:00 p.m., is not a violation of this section.

(b) A VSF may not require an owner, operator or agent of an owner or operator of a vehicle to sign an authorization or release form to release the vehicle from the VSF if that form:

- (1) changes the status of the law enforcement initiated tow from a nonconsent status to a consent tow status;
- (2) changes the status of the storage resulting from a nonconsent tow from a nonconsent storage status to a consent storage status; or
- (3) imposes any additional charges not regulated by the department.

(c) A person may not execute, submit or use a department-approved form or other document which contains a false, fictitious, dishonest, or fraudulent statement of a material fact used for the purpose of obtaining possession of or access to a motor vehicle stored by a facility licensed under Texas Occupations Code, Chapter 2303.

- (1) For purposes of this section, a false, fictitious, dishonest, or fraudulent statement related to authorization from the vehicle owner to the person or entity named in the form or document is a material fact.
- (2) Conduct found by the commission or the executive director by final order to have violated this section shall be deemed fraudulent and dishonest conduct.

85.711. Responsibilities of Licensee—Forms of Payment for Release of Vehicle. *(New section adopted effective April 15, 2008, 33 TexReg 2931; amended effective January 1, 2016, 40 TexReg 9122)*

(a) In addition to other forms of payment accepted by the VSF, including a governmental VSF, a VSF must accept cash, debit cards and credit cards.

(b) A VSF in violation of subsection (a), in addition to administrative penalties, may not charge for the storage of a vehicle beyond the date payment by credit card is tendered.

85.712. Responsibilities of Licensee—Release of Vehicles; Payment by Lienholder or Insurance Company. *(New section adopted effective April 15, 2008, 33 TexReg 2931)*

EXHIBIT

1-H

liable to Plaintiff for the following reasons:

1. **Legal Excuse and Justification.** Subject to and without waiving any other defenses, for further Answer and as a separate affirmative defense, Defendant asserts that no breach of contract, if a valid and enforceable one exists, occurred as Defendant was legally excused and justified for releasing the subject vehicle (Smith's 2013 Jeep Wrangler, VIN Number IC4AJWAGXDL531811) to Government Employees Insurance Company ("GEICO") as GEICO, Plaintiff's insurer, was Plaintiff's authorized representative in compliance with the *Administrative Rules of the Texas Department of Licensing and Regulation*, 16 TEXAS ADMINISTRATIVE CODE, Chapter 85.
2. **Ratification.** Subject to and without waiving any other defenses, for further Answer and as a separate affirmative defense, Defendant asserts that Plaintiff ratified the transfer of the subject vehicle at issue as Plaintiff fully knew of the facts surrounding the release of the subject vehicle to GEICO and thereafter voluntarily and intentionally communicated to GEICO to preserve the subject vehicle from destruction.
3. **Waiver.** Subject to and without waiving any other defenses, for further Answer and as a separate affirmative defense, Defendant asserts that Plaintiff waives its claimed breach of contract, if any, with Defendant by showing a conscious intent to do so when Plaintiff did not object to the transfer of the subject vehicle to GEICO, but instead remained silent and

inactive in asserting Plaintiff's rights, if any, against Defendant.

4. **Novation.** Subject to and without waiving any other defenses, for further Answer and as a separate affirmative defense, Defendant asserts the defense of novation, that if there was a valid and enforceable contract between Plaintiff and Defendant, any obligations Defendant had under said contract were replaced and discharged by GEICO as a new party to the contract, which the parties mutually agreed to, extinguishing any earlier formed contract between Defendant and Plaintiff.
5. **Responsible Third Party.** Subject to, and without waiving any other defenses, for further Answer and as a separate defense, Defendant asserts that if Plaintiff was damaged as alleged, such damages, if any, were proximately caused or occasioned by the acts, omissions or contributory negligence, breach of contract, breach of warranty or other legal liability of third parties, their agents or representatives, or by the instrumentalities of third parties for whom Defendant is not liable. Defendant alleges that, if Plaintiff was injured in the manner asserted, in whole or in part, the same was brought about as a result of the negligent acts or omissions, or breaches of duty of third parties not under Defendant's control.

Defendant further states and alleges that damages, if any, for emotional distress and any damages that are unforeseeable and/or speculative are not recoverable under either breach of contract or promissory estoppel causes of action.

III.

DEMAND FOR JURY TRIAL

Defendant hereby demands a trial by jury and submits the appropriate jury fee.

IV.

DISCOVERY CONTROL PLAN

Defendant requests a Level 3 Discovery Plan.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff takes nothing by this suit; and that Defendant goes hence without delay and recover all costs and attorneys' fees expended on Defendant's behalf. Praying further, Defendant prays for such other and further relief, either at law or in equity, to which Defendant may be justly entitled.

Respectfully submitted,

CHAMBLEE & RYAN, P.C.

By: /s/ Jarad L. Kent
Jarad L. Kent
State Bar No. 24062824
jkent@cr.law

2777 N. Stemmons Freeway, Suite 1157
Dallas, Texas 75207
(214) 905-2003
(214) 905-1213 (Facsimile)

**ATTORNEY FOR DEFENDANT
R&M TOWING AND RECOVERY**

CERTIFICATE OF SERVICE

I do hereby certify that on August 22, 2017 a true and correct copy of the above and foregoing document has been forwarded by e-service to Plaintiff's counsel of record, and to all known counsel by e-service.

Rebecca C. Brightwell
415 S. First Street, Suite 430
Lufkin, TX 75901

Darren M. Vanpuymbrouck
Freeborn & Peters, LLP
311 South Wacker Drive, Suite 3000
Chicago, IL 60606

/s/ Jarad L. Kent
Jarad L. Kent

EXHIBIT

1-I

CAUSE NO. 17CV33998

**RAMONA L. SMITH, Individually and
As Administrator of the Estate of Arthur
Smith,
Plaintiff,**

v.

**GOVERNMENT EMPLOYEES
INSURANCE COMPANY and R&M
TOWING AND RECOVERY,
Defendants.**

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IN THE DISTRICT COURT

273RD JUDICIAL DISTRICT

SHELBY COUNTY, TEXAS

NOTICE OF FILING NOTICE OF REMOVAL

COMES NOW, Defendant Government Employees Insurance Company (hereafter, “Defendant”), by and through its attorneys, Perry Law P.C. (Meloney Perry and Stacy Thompson), and hereby files its Notice of Filing Notice of Removal to Federal Court, and would respectfully show the Court as follows:

I.

Written notice of the removal of this cause will be filed contemporaneously with the United States District Court for Eastern District of Texas, Beaumont Division on August 25, 2017. A copy of the Notice of Removal without exhibits, as submitted to the United States District Court, together with the Certificate of Service to Plaintiff’s counsel, is attached.

II.

This Court is respectfully requested to proceed no further in this action, unless and until such time as the action may be remanded by order of the United States District Court.

Respectfully submitted this 25th day of August 2017.

Respectfully submitted,

PERRY LAW P.C.

By: /s/ Stacy Thompson

Meloney Perry
State Bar No. 00790424
Stacy Thompson
State Bar No. 24046971
Shannon Spizman
State Bar No. 24086729

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**ATTORNEYS FOR DEFENDANT
GOVERNMENT EMPLOYEES INSURANCE
COMPANY**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of August 2017, I filed the foregoing electronically, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Rebecca C. Brightwell
LAW OFFICES OF REBECCA C. BRIGHTWELL, PLLC
115 Gaslight Boulevard, Suite B
Lufkin, Texas 75904
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Counsel for Plaintiff

Darren M. Vanpuymbrouck
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jkent@cr.law
Counsel for Defendant R&M Towing

/s/ Stacy Thompson
Stacy Thompson

EXHIBIT

1-J

Case Information**Offense or Cause**

SMITH, RAMONA L Et Al Vs.
GOVERNMENT EMPLOYEES
INSURANCE COMPANY

DAMAGES -
AUTO. ACCIDENT

Case Identifier Shelby District Court TX — CV-
2017-33998

Type of Case Miscellaneous Civil Cases

Date Filed 06/16/2017

Amount Owed \$0.00 (as of 08/25/2017 03:21pm)

Parties Involved

Attorney	KENT, JARAD L <i>of Dallas TX</i>
Plaintiff	SMITH, RAMONA L <i>of Shelbyville TX</i>
Attorney	BRIGHTWELL, REBECCA C
Defendant	GOVERNMENT EMPLOYEES INSURANCE COMPANY <i>of Dallas TX</i>
Plaintiff	SMITH, ARTHUR M <i>of Shelbyville TX</i>
Defendant	R&M TOWING AND RECOVERY <i>of Henderson TX</i>
Attorney	VANPUYMBROUCK, DARREN M <i>of Chicago IL</i>
Plaintiff	ESTATE OF ARTHUR SMITH

Case entries

Date	Description	Amount	Images
06/16/2017	BASIC CIVIL NEW SUIT \$272 09.01.15	\$50.00	
06/16/2017		\$50.00	
06/16/2017		\$35.00	
06/16/2017		\$15.00	
06/16/2017		\$5.00	
06/16/2017		\$5.00	
06/16/2017		\$10.00	
06/16/2017		\$5.00	
06/16/2017		\$42.00	
06/16/2017		\$10.00	
06/16/2017		\$10.00	
06/16/2017		\$5.00	
06/16/2017		\$30.00	
06/16/2017	CITATION	\$8.00	
06/16/2017	CITATION	\$8.00	

Date	Description	Amount	Images
06/16/2017	COMPLAINT AND REQUEST FOR JURY TRIAL - NS		32 images
06/16/2017	EFILE PRINT PREV - PETITION - NS		2 images
06/16/2017	SPOKE WITH TRACY WITH ATTY BRIGHTWELL SHE WILL EFILE A CVR LTR AND IS SENDING TH		
06/16/2017	CVR LTR FROM ATTY BRIGHTWELL TO CLERK RE: ISSUE CITATIONS - NS		1 image
06/16/2017	EFILE PRINT PREV - CVR LTR / JURY FEE PAID - NS		2 images
06/16/2017	JURY FEE	\$40.00	
06/19/2017	CIT ISS TO GEICO AND EMAILED TO ATTY FOR SERVICE - NS		1 image
06/19/2017	CIT ISS TO R&M TOWING AND RECOVERY AND EMAILED TO ATTY FOR SERVICE - NS		1 image
06/19/2017	EMAIL CONFIRMATION FOR CITATIONS SENT TO ATTY BRIGHTWELL FOR SERVICE - NS		1 image
07/05/2017	CITATION - RTN SERVED - R&M TOWING - JUNE 23RD - PW		1 image
07/05/2017	EFILE PRT PREV - CITATION RETURN - PW		2 images
07/12/2017	ORIGINAL ANSWER - R&M TOWING - EXHIBITS ATTACHED -ME		4 images
08/22/2017	DEF R&M TOWING AND RECOVERY'S ORIG ANS TO PLAINTIFFS ORIG PET AND REQ FOR JURY TR		5 images
08/22/2017	EFILE PRINT PREV - ANSWER - NS		2 images
08/22/2017	JURY FEE PAID - NS	\$40.00	
Grand Total		\$368.00	

Calendar events

Date	Time	Description	Images
06/16/2017		STATUS CIVIL JURY	
06/16/2017		STCI-NEW CASES FILED DURING MONTH	
06/16/2017		STCI: JURY FEE PAID/INDIGENCY OATH FILED	

Receipts

Date	Description	Amount	Images
06/16/2017	Receipt 034158 received of BRIGHTWELL, REBECCA C	\$288.00	
06/19/2017	Receipt 034161 received of BRIGHTWELL, REBECCA C	\$40.00	
08/24/2017	Receipt 034424 received of KABETZKE, JOANN	\$40.00	
Grand Total		\$368.00	